



**FILED**  
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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Frontier Communications Corporation, Frontier California Inc. (U1002C), Citizens Telecommunications Company of California Inc. (U1024C), Frontier Communications of the Southwest Inc. (U1026C), Frontier Communications Online and Long Distance Inc. (U7167C), Frontier Communications of America, Inc. (U5429C) for Determination that Corporate Restructuring is Exempt from or Compliant with Public Utilities Code Section 854.

Application 20-05-010

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER**

This Scoping Memo and Ruling (Scoping Memo) sets forth the issues, need for hearing, schedule, category, and other matters necessary to scope this proceeding pursuant to Public Utilities (Pub. Util.) Code Section 1701.1 and Article 7 of the Rules of Practice and Procedure (Rules) of the California Public Utilities Commission (Commission).

**1. Procedural Background**

On May 22, 2020, Applicants Frontier Communications Corporation, Frontier California Inc., Citizens Telecommunications Company of California Inc., Frontier Communications of the Southwest Inc., Frontier Communications Online and Long Distance Inc., and Frontier Communications of America, Inc. (collectively Applicants) filed an Application (Application) for a determination that a corporate restructuring (Restructuring) is exempt from or compliant with Pub. Util. Code Section 854. By Resolution ALJ 176-3462 filed on

May 28, 2020, the Commission preliminarily determined that this proceeding was ratesetting and that hearings were necessary. On June 29, 2020, the Public Advocates Office at the Commission (Public Advocates Office) filed a protest to the Application and The Utility Reform Network, the Communications Workers of America, District 9, The Greenlining Institute, and the Center for Accessible Technology filed a joint protest to the Application (all intervenors collectively Intervenors). All parties jointly filed a meet and confer report (Report) on July 20, 2020 in response to the Administrative Law Judge's (ALJ) directive in the July 6, 2020 E-Mail Ruling Setting Telephonic Prehearing Conference and Directing Parties to Meet and Confer. A Prehearing Conference (PHC) was held on July 24, 2020.

## **2. Categorization and Necessity for Hearings**

The Commission preliminarily categorized this proceeding as ratesetting and determined that this proceeding would require evidentiary hearings. All parties agreed that the ratesetting categorization was appropriate. The submissions from the parties reflect that at this early stage in this proceeding it is uncertain whether evidentiary hearings will be necessary but that it would not be appropriate to reverse the Commission's preliminary determination requiring evidentiary hearings. The issue of the necessity for hearings will be revisited at the October 13, 2020 status conference set forth below in the proceeding schedule. As a result, this Scoping Memo affirms the Commission's preliminary categorization of this proceeding as ratesetting and the necessity for hearings.

## **3. Issues**

The Restructuring will result in a change in control of the ownership of Applicants, and the parties correctly cite Pub. Util. Code Sections 853 and 854 as the statutes that may be relevant to the issues in scope. Pub. Util. Code

Section 854 sets forth various criteria for the Commission to consider in determining whether a merger, acquisition, or control proposal is in the public interest. Pub. Util. Code Section 853(b) allows the Commission to exempt a public utility from Pub. Util. Code Section 854 if its application “is not necessary in furtherance of the public interest.” Because Pub. Util. Code Sections 853(b) and 854 relate to the same subject, they must be construed together and harmonized if possible.<sup>1</sup> Reasonably construed, Pub. Util. Code Section 853(b) can be applied by the Commission to exempt from review those provisions of Section 854 that are not relevant to the public interest.<sup>2</sup>

Although the record shows that most of the criteria under Pub. Util. Code Section 854 apply to the Restructuring, some do not. Section 854(b)(2)'s equitable allocation of economic benefits between shareholders and ratepayers “where the [C]ommission has ratemaking authority” does not apply because the Commission does not exercise ratemaking authority over Applicants. The Restructuring is not a merger or acquisition that could have an adverse effect on competition, and therefore Section 854(b)(3) does not need to be considered. The Restructuring will extinguish the ownership interests of the current shareholders of parent Frontier Communications Corporation, making an evaluation of whether the Restructuring is fair and reasonable to the current shareholders under Section 854(c)(5) a pointless exercise. Consideration of those three issues in this proceeding would not be a productive use of time and resources and would not be in the public interest. Therefore, Section 853(b) is construed to

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<sup>1</sup> *Mannheim v. Superior Court* (1970) 3 Cal.3d 678, 687.

<sup>2</sup> See November 27, 2019 Ruling in I.19-09-016 at 5-6 (applying Section 853(b) and reviewing specific criteria under Section 854).

exempt subsections (b)(2), (b)(3), and (c)(5) of Section 854 from the issues in scope.

Although Section 854 sets forth public interest criteria for the Commission's consideration, it does not bar the examination of other factors. The legislature could not have anticipated every issue that arises from the diverse transactions covered by Section 854, and an adequate evaluation of the public interest requires that all relevant issues be taken into account.

After consideration of the entire record, the primary issue in this proceeding is whether, under Pub. Util. Code Sections 853 and 854, the Restructuring is in California's public interest, including whether, after full consideration of its present and future effects, the Restructuring:

1. Provides short-term and long-term economic benefits to ratepayers (Section 854(b)(1)).
2. Maintains or improves Applicants' financial condition (Section 854(c)(1)).
3. Maintains or improves Applicants' quality of service (Section 854(c)(2)).
4. Maintains or improves Applicants' quality of management (Section 854(c)(3)).
5. Is fair and reasonable to affected Applicants' employees, including both union and nonunion employees (Section 854(c)(4)).
6. Is beneficial on an overall basis to state and local economies, and to the communities in the area served by Applicants (Section 854(c)(6)).
7. Preserves the jurisdiction of the Commission and the capacity of the Commission to effectively regulate and audit Applicants (Section 854(c)(7)).
8. Provides mitigation measures to prevent significant adverse consequences that may result (Section 854(c)(8)).

9. Raises any safety or health considerations, including any effects on 911 service.
10. Provides economic and noneconomic benefits to the tribal communities in the area served by Applicants.
11. Will result in the transfer or disposal in any form of Applicants' assets, and whether the Commission should require that local or tribal governments have a right of first offer or a right of first refusal regarding any transfer or disposal of Applicants' assets.
12. Affects the performance of Applicants' obligations under and compliance with the terms and conditions of laws and Commission decisions, rules, orders, and resolutions.
13. Affects the performance of Applicants' obligations and compliance with the terms and conditions relating to Applicants' status as a Carrier of Last Resort and an Eligible Telecommunications Carrier.
14. Affects the rate or price charged to a ratepayer or customer.
15. Affects Applicants' performance or compliance with the terms and conditions of service to a ratepayer or customer.
16. Affects Applicants' network infrastructure.
17. Affects Applicants' broadband deployment.
18. Affects the performance of Applicants' obligations under, compliance with the terms and conditions of, and future participation in universal service and public purpose programs, including the California Advances Services Fund, the California High Cost Fund-B, California LifeLine Services, the California Teleconnect Fund, the Connect America Fund, and the Deaf and Disabled Telecommunications Program.
19. Has any potential environmental impact requiring consideration under the California Environmental Quality Act.
20. Affects Applicants' provision of special access services, including backhaul services.

21. Will increase, modify, or affect the Commission’s responsibilities regarding the regulation of Applicants.

**4. Schedule**

The following schedule is adopted for this proceeding:

<b>Event</b>	<b>Date</b>
Applicants’ Testimony	August 4, 2020
Confirmed Plan of Reorganization Filed	August 14, 2020
Public Participation Hearings/Workshops	September/October 2020*
Intervenors’ Testimony	September 23, 2020
Applicants’ Rebuttal Testimony	October 5, 2020
Status Conference	October 13, 2020
Evidentiary Hearings (if needed)	October 26, 27, 28, 2020
Parties’ Opening Briefs	November 18, 2020
Parties’ Reply Briefs	December 10, 2020

\*- The scheduling of Public Participation Hearings and/or Workshops is dependent on considerations of health and safety, technology, and adequate notice.

The schedule may be modified by the ALJ as required to promote the efficient and fair resolution of the Application. The schedule does not preclude a party from filing a motion to modify the dates for good cause. This proceeding will stand submitted upon the filing of reply briefs unless the ALJ requires further evidence or argument. Based on the schedule, this proceeding will be resolved within 18 months as required by Pub. Util. Code Section 1701.5.

**5. Alternative Dispute Resolution (ADR) Program and Settlements**

The Commission’s Alternative Dispute Resolution (ADR) program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties’ request, the assigned ALJ can refer

this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.

Any settlement between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing. Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law, and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

#### **6. *Ex Parte* Communications**

In this ratesetting proceeding, *ex parte* communications with Commissioners, their advisors, and the ALJ are restricted and must be reported pursuant to Article 8 of the Rules.

#### **7. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the online docket card for the proceeding.

#### **8. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/>, contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TYY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **9. Filing, Service, and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur. When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9(f).

## **10. Public Outreach**

Pursuant to Pub. Util. Code Section 1711(a), I report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.



### **11. Intervenor Compensation**

The PHC was held on July 24, 2020. Pursuant to Pub. Util. Code Section 1804(a)(1), a party who intends to seek an award of compensation must file and serve a notice of intent to claim compensation by August 24, 2020.

### **12. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner in this proceeding. Pursuant to Rule 13.2, the assigned Commissioner designates assigned ALJ Peter Wercinski as the Presiding Officer in this proceeding. Either the assigned Commissioner or Presiding Officer may amend the scope and schedule set forth in this Scoping Memo and Ruling.

#### **IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is set forth above.
3. This proceeding is categorized as ratesetting.
4. This proceeding requires evidentiary hearings.
5. The Presiding Officer is Administrative Law Judge Peter Wercinski.

This order is effective today.

Dated August 5, 2020, at San Francisco, California.

/s/ MARTHA GUZMAN ACEVES

Martha Guzman Aceves  
Assigned Commissioner